

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 March 2024

DOCKET NUMBER: AR20230008571

APPLICANT REQUESTS: A different, presumably more favorable, narrative reason for separation.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- DA Form 3349 (Medical Condition – Physical Profile Record)
- Veterans Affairs (VA) Form 21-4138 (Statement in Support of Claim)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, Section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states he believes he was discharged with something physically impossible for him to have; Spondylosis. A recent physical and x-ray proves this statement to be true.
3. The applicant enlisted in the Regular Army on 30 June 1972, for 3 years. His service record shows he neither completed training nor was awarded a military occupational specialty.
4. A DA Form 3349 (Medical Condition – Physical Profile Record), dated 13 July 1972, notes the applicant had Spondylosis L3. He was found not medically qualified for duty. He was placed on a permanent profile and all training was suspended. He was pending discharge for a condition that existed prior to service.
5. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing. However, Special Orders 222, issued by U.S. Army Training Center, Infantry, Fort Ord, CA on 9 August 1972, show the applicant was pending discharge under the provisions of Army Regulation 635-200

(Personnel Separations – Enlisted Personnel), Section III, Chapter 5, for physical disability.

6. The applicant was honorably discharged on 15 August 1972, under the provisions of Army Regulation 635-200, Section III, Chapter 5. He was issued Separation Program Number 375 (discharge because of not meeting medical fitness standards at time of enlistment) and Reenlistment Code RE-3. He was credited with 1 month and 16 days of net active service this period.

7. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

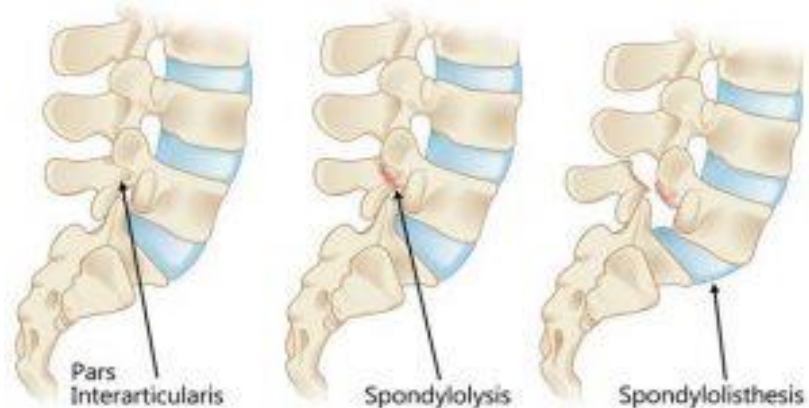
8. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR stating "Discharged with something I don't have, no spondylolysis L3".

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 30 June 1972 and was honorably discharged on 15 August 1972 under the authority provided in section III (paragraph 5-9) of AR 635-200, Personnel Separations – Enlisted Personnel: "Discharge of personnel who did not meet procurement medical fitness standards." The separation program number 375 denotes "Discharge because of not meeting medical fitness standards at time of enlistment."

Spondylolysis is the term for the isolated pars interarticularis defects/fractures responsible for this condition and are present in up to 6% of the population. They are most often either congenital or acquired from repetitive overuse in activities requiring hyperextension of the lumbar spine, e.g., gymnastics or a down lineman in football.



They are almost never secondary to acute trauma.

While reports of trauma are often associated with an onset or increase in lumbar pain associated with spondylolysis, isolated pars fractures are very rarely caused by trauma: The substantial energy required to yield these fractures through acute trauma would also lead to the fracturing of nearby associated bony structures.

d. No medical documentation was submitted with the application. Because of the period of service under consideration, there are no encounters in AHLTA or documents in iPERMS.

e. On 13 July 1972, the applicant was placed on a duty limiting permanent physical profile "spondylolysis L3 ... No lifting running. Suspend all training. EPTS [existed prior to service]."

f. There is no separation packet or additional documentation addressing his involuntary administrative separation was submitted with the application.

g. Review of his medical records in JLV shows he received care at DOD facilities from 2009 thru 2013 while a civilian electrician. There are no Veterans Hospital Administration encounters.

h. It is the opinion of the ARBA Medical Advisor that a referral of his case to the Disability Evaluation System for this preexisting condition is not warranted.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising official finding a referral of the applicant's case to the Disability Evaluation System for this preexisting condition is not warranted. The Board determined the applicant's record is absent supporting medical documentation to properly address the applicant's contentions. Evidence shows the applicant was entry level and completed 1 month and 16 days of net active service this period. The Board agreed the applicant was discharged for not meeting procurement medical fitness standards. As such, the Board found the applicant's DD Form 214 properly shows the appropriate narrative reason therefore, relief is denied.

2. This board is not an investigative body. The Board determined despite the absence of the applicant's medical records, they agreed the burden of proof rest on the applicant, however, he did not provide any supporting documentation and his service record has insufficient evidence to support the applicant contentions for referral to DES and a more favorable, narrative reason for separation.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

3/25/2024

X

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, Section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by the ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.
3. Army Regulation 635-5 (Personnel Separations - Separation Documents), Appendix I provides that separation program numbers identify reasons for and types of separation from active duty. Separation program number narrative reasons are aligned with applicable regulatory authority paragraphs. The separation program number 375 is the appropriate code to assign Soldiers separated under the provisions of Army Regulation 635-200, for not meeting medical fitness standards at time of enlistment (or induction).

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Chapter 5 provided the conditions under which enlisted personnel may be discharged, released from active duty or active duty for training, or released from military control, for the convenience of the Government.

c. Paragraph 5-9 provided for the discharge of enlisted personnel who did not meet procurement medical fitness standards when accepted for induction or initial enlistment will be discharged when a medical board, regardless of the date completed, establishes that a medical condition was identified by appropriate military medical authority within 4 months of the member's initial entrance on active duty or active duty for training.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//